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BAYER CORPORATION; BAYER HEALTHCARE LLC;  
BAYER AG; BAYER SCHERING PHARMA AG

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ONYX PHARMACEUTICALS, INC.,

Plaintiff,

v.

BAYER CORPORATION, et al.,

Defendants.

Case No. CV 09 2145 MHP

**STIPULATION AND ~~PROPOSED~~  
ORDER REVISING TRIAL DATE  
AND PRETRIAL SCHEDULE**

**AS AMENDED BY COURT**

IT IS HEREBY STIPULATED by and between plaintiff Onyx Pharmaceuticals, Inc.  
("Onyx") and defendants Bayer Corporation, Bayer AG, Bayer HealthCare LLC and Bayer  
Schering Pharma AG (collectively, "Bayer") as follows:

1           1.       WHEREAS, on August 21, 2009, the parties submitted the initial joint case  
2 management statement proposing trial in May 2011, and on August 31, 2009, as a result of the  
3 initial case management conference, this Court entered an Order setting this matter for trial on  
4 May 17, 2011;

5           2.       WHEREAS, on August 2, 2010, the Court entered a supplemental case  
6 management Order that shifted some dates but maintained the May 17, 2010 trial date;

7           3.       WHEREAS, the parties have been extremely busy producing millions of pages of  
8 documents and completing 20 depositions all over the world. But given the remaining discovery,  
9 the parties respectfully request an approximate four-week extension of remaining due dates as set  
10 forth below. The parties also proposed additional language to provide clarity regarding what  
11 needs to be accomplished on each date;

12           4.       WHEREAS, Onyx believes the trial date need not be continued, but is willing to  
13 compromise and agree to this approximate four-week extension. Onyx only agrees to this new  
14 schedule, however, if the Court can accommodate a trial beginning on June 13, 2011. Otherwise,  
15 Onyx believes the Court should adopt the stipulated deadlines below for fact discovery and  
16 expert discovery (events 1, 2, 3 and 6) and should maintain all other deadlines according to the  
17 current schedule;

18           5.       WHEREAS, given the remaining work, Bayer believes the schedule should be  
19 shifted at least 90 days but is willing to compromise and agree to this approximate four-week  
20 extension. Bayer remains hopeful that, if both parties use their best efforts, the remaining  
21 discovery can be accomplished and the parties can heed these proposed new dates. But given the  
22 tightness of the proposed schedule, should circumstances necessitate, Bayer reserves the right to  
23 request a further extension of the schedule if necessary and upon a showing of good cause.  
24 Bayer believes that Onyx's alternative proposal (should the Court not be able to accommodate a  
25 trial beginning on June 13, 2011) to shift some of the deadlines but not others is unworkable and  
26 creates conflicts and prejudice; and

27           6.       WHEREAS, the remaining discovery outstanding includes:

- 28           • Ten fact depositions, two of which require international travel;

- Twenty hours of deposition for individuals listed on the parties' witness lists who have not yet been deposed;
- Bayer's responses to Onyx's twenty new requests for production, which were timely served on October 19, 2010;
- Bayer's responses to Onyx's seventeen new interrogatories (Bayer believes there are more than seventeen given subparts), which were timely served on October 19, 2010;
- Bayer's responses to Onyx's eighteen new requests for admission, which were timely served on October 19, 2010;
- Production of documents by Onyx in response to Bayer's ten new requests for production, which were timely served on October 12, 2010; and
- Production of documents by both parties from certain new custodians,

THEREFORE, the parties stipulate and jointly move the Court to enter a revised case management Order reflecting the following revised schedule:

Event	Current Schedule	Revised Schedule
1. Fact discovery deadline	11/18/10	12/17/10 (but no new written discovery)
2. Exchange of expert reports by the party bearing the burden of proof on the issues raised in the expert report	12/2/10	1/10/11
3. Exchange of responding party expert reports	1/7/11	2/7/11
4. Trial witness disclosures, listing witnesses the parties in good faith intend to call at trial	1/11/11	1/14/11
5. Supplemental trial witness disclosures (only for "good cause" based on initial trial witness disclosures and responding party's expert reports)	None	2/11/11
6. Expert discovery deadline	2/4/11	3/04/11
7. Depose trial witnesses not yet deposed (20 hour total limit)	2/16/11	3/04/11
8. Deadline to file motions on merits	2/7/11	3/14/11
9. Deadline to hear motions on merits	3/14/11	4/18/11
10. Joint Pretrial Conf Statement and Order	4/6/11	5/06/11
11. Exhibit and Testimony Objections	4/20/11	5/20/11
12. Pretrial Conference	4/27/11	<del>5/31/11</del> 6/1/11 at 2:30 pm
13. Trial	5/17/2011	<del>6/13/11</del> 6/14/11 at 8:30 am

1 IT IS SO STIPULATED.

2 Dated: November 16, 2010

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14 Dated: November 16, 2010

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**SUPPLEMENTAL CASE MANAGEMENT ORDER**

This Stipulation and ~~[Proposed]~~ Order Revising Trial Date and Pretrial Schedule is hereby adopted by the Court as the Case Management Order for the case.

IT IS SO ORDERED

Dated: 11/16/2010



**GENERAL ORDER 45 ATTESTATION**

In accordance with General Order 45, concurrence in the filing of this document has been obtained from each of the signatories and I shall maintain records to support this concurrence for subsequent production for the court if so ordered or for inspection upon request by a party.

/s/ Lawrence R. Katzin

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